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December 27, 2012

**VIA FACSIMILE TRANSMITTAL (914.390.4278)**

The Honorable Cathy Seibel  
 United States District Court, S.D.N.Y.  
 300 Quarropas Street  
 White Plains, New York 10601

Re: *Bais Yaakov of Spring Valley v. Alloy, Inc. and Channel One, LLC*  
 12-CV-00581 (CS) (GAY)

Your Honor:

As counsel for the defendants, I am writing to respond to Plaintiff's December 21, 2012 letter informing the Court of the two recent decisions in *Landsman & Funk, PC v. Skinder-Strauss Associates*, 08 CV. 3610 (D.N.J. Dec. 19, 2012) and *Goodrich v. Afgo Mechanical Servs., Inc.*, 2012 WL 6554221 (D.N.J. Dec. 14, 2012).

These two decisions—like all other post-*Mims v. Arrow Fin. Servs., LLC*, 132 S.Ct. 740 (2012) district court decisions Plaintiff's counsel has brought to this Court's attention after full briefing of Defendant's Combined Motion to Dismiss and Strike—are from outside the Second Circuit. And like all previous district court decisions Plaintiff's counsel has brought to this Court's attention, these New Jersey District Court decisions do not (and could not) disturb binding Second Circuit precedent barring TCPA class actions in New York federal courts. See *Giovanniello v. ALM Media, LLC*, 660 F.3d 587 (2d Cir. 2011) (holding state statute of limitations periods apply to TCPA claims brought in federal court); *Holster v. Gatco, Inc.*, 618 F.3d 214 (2d Cir. 2010) (holding that New York C.P.L.R. § 901(b) bars TCPA class action claims in New York federal courts).

*Giovanniello* remains the law of the Second Circuit, a fact unmentioned in Plaintiff's December 21, 2012 letter and the two recent New Jersey District Court decisions cited in that letter. In fact, neither decision even mentions *Giovanniello*. These decisions are of no authority to this Court's determination of whether Plaintiff's TCPA claims be allowed to proceed on behalf of a class.

But how *Giovanniello* is decided post-remand from the Supreme Court is important to this Court's decision on the Motion to Dismiss or Strike. As this Court has

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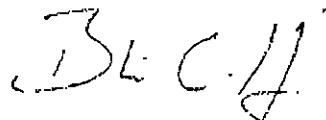
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previously been made aware, on October 1, 2012 the Supreme Court remanded *Giovanniello* with instructions that the Second Circuit reconsider the decision in light of *Mims*. The remand is now pending before the Second Circuit (No. 10-3854-CV), and a briefing schedule has been set. Plaintiff-Appellant filed his brief on December 6, 2012. Defendant-Appellee's brief is due January 18, 2013. (The Second Circuit has not set oral argument or a decision date.)

The Second Circuit's decision on remand in *Giovanniello* could affect how this Court decides Defendant's Motion to Dismiss and Strike. The two New Jersey District Court decisions (and the numerous other decisions previously brought to this Court's attention) will not.

Sincerely,

LATHROP & GAGE LLP



By:

Blaine C. Kimrey

BCK

cc: Aytan Bellin, Esq. (counsel for Plaintiff)  
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**RE:** *Bais Yaakov v. Alloy, Inc., et al.* 3  
Case No. 12-cv-00581 (CS) (GAY)

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